

LEGISLATIVE REPORT

A ROUND-UP OF ECONOMIC, EMPLOYMENT AND BUSINESS LEGISLATION FROM MARYLAND'S 2011 LEGISLATIVE SESSION



By maintaining funding for Maryland's economic development programs and in passing InvestMaryland, the O'Malley Administration's signature business investment initiative, the General Assembly demonstrated its commitment to job

creation and long-term economic growth in the State.

Secretary Christian Johansson

EXECUTIVE SUMMARY

Governor Martin O'Malley and the Maryland Department of Business & Economic Development worked in tandem with elected officials, business owners, employers and advocates to develop and coordinate a forward-looking economic agenda to support businesses and create jobs.

■ INVESTMARYLAND Passes

The Department worked closely with business and legislative leaders to ensure the successful passage of InvestMaryland, the O'Malley Administration's signature economic development initiative and the State's largest-ever venture capital investment in its most promising and exciting entrepreneurial enterprises. Designed to unlock capital for early-stage companies, InvestMaryland will fuel investment in our innovation economy, capitalize small and minority businesses, and replenish the DBED-administered **Maryland Venture Fund**.

Specifically **HB 173 Business and Economic Development - InvestMaryland Program**:

Establishes the DBED-administered InvestMaryland program, which will provide startup and working capital for promising companies and is effective July 1, 2011.

- The bill provides \$100 million in insurance premium tax credits that will be auctioned to raise venture capital for the State's entrepreneurs.
- Two-thirds of the funds will be invested on behalf of the State by private venture capital firms, while the Maryland Venture Fund and the Maryland Small Business Development Financing Authority will administer the remaining one-third.
- The bill also allocates \$250,000 to the Rural Maryland Council, an organization that promotes the State's natural resource based industries.

As a result, the Maryland General Assembly:

- Tackled a \$1.4 billion budget deficit and made difficult decisions to ensure a balanced budget; decisions by both the Governor and General Assembly will ensure Maryland's strong fiscal footing and continued AAA bond rating. In the midst of these decisions, they maintained support for economic development priorities.
- Passed Maryland's largest-ever venture capital investment initiative, the **InvestMaryland Program**.
- Approved funding for Tourism, Film and the Arts: Preserved the Governor's FY 2012 budget allowance \$5.35M for the Maryland Tourism Development Board, \$14.4M for the Maryland State Arts Council and \$2M for the **Film Production Rebate Program**.
- Approved funding for the **Maryland Small Business Development Financing authority**: FY 2012 appropriation is \$5M; Also \$15M for MEDAF and \$2.4M in MIDFA funds to be used for nano-biotechnology assistance.
- Maintained the General Fund **Biotech Investment Incentive Tax Credit** at \$8M.

As we celebrate the passage of this historic initiative, we now turn our attention to implementation. Key next steps include:

- Establishing the Maryland Venture Fund Authority
- Marketing the program to insurance companies and venture capital firms
- Selecting a 3rd party to administer the tax credit auction process
- Selecting a 3rd party to conduct the venture capital firm selection process

The Department expects to begin the venture capital firm selection process by January 2012.



■ Legislative Accomplishments

The 2011 Session will be remembered for several high profile issues that included Governor O'Malley's proposals for wind energy and InvestMD; the continuing budget and fiscal challenges; gay marriage; in-state tuition for illegal immigrants; direct shipment of wine and an increase in the tax on alcohol. More than 2300 bills were introduced and several bills were adopted that support Maryland's businesses and economic development efforts. The State's long standing Minority Business Enterprise program was reauthorized for another year while a disparity study is reviewed; changes to the **Biotechnology Investment Incentive Tax Credit** were adopted to ensure the ongoing availability of working capital for established companies; cybersecurity continues to be in the forefront as we witnessed the creation of a Commission to create a plan to promote cybersecurity innovation; and the film industry saw a boost in funding after years of decline. A summary of selected key bills that passed follows.

SB 120/HB 456 Procurement—Minority Business Participation

Extends the Minority Business Enterprise (MBE) program for one year, until July 1, 2012, and repeals the program's subgoals for women- and African American-owned businesses (10% and 7% respectively). In addition to repealing the subgoals, the bills codify in statute and clarify existing regulatory provisions related to the granting of waivers from MBE participation goals in individual procurements, and authorize procurement units to exempt sole source, expedited or emergency procurements from MBE contract goals if the public interest cannot reasonably accommodate their use. *Effective July 1, 2011.*

SB 485/HB 587 Biotechnology Investment Tax Credit - Qualified Maryland Biotechnology Company

Extends the eligibility period for bio companies up to 15 years of age to receive tax credits under this program for an additional two years, through 2013, after which the provision would sunset. *Effective July 1, 2011.*



On April 12, Governor O'Malley joined Senate President Miller, House Speaker Busch (not pictured), and Lt. Governor Brown, to sign 163 pieces of legislation that continue moving Maryland forward despite difficult economic times.

SB 557/HB 665 Commission on Maryland Cybersecurity Innovation and Excellence

Creates a commission, to be staffed by University of MD University College, to conduct an intensive review and study of Cybersecurity Innovation in Maryland. The Commission will develop various recommendations and strategies, as well as a plan to promote cybersecurity innovation, and will identify a State agency that is suitable to implement a pilot program. *Effective July 1, 2011.* The Department hopes to use this opportunity to continue to promote Maryland as the epicenter of cybersecurity, and to gain valuable feedback from a variety of stakeholders in a collaborative framework.

Senate Bill 512 Gaming—Video Lottery Terminals

This emergency legislation makes several changes to the State's Video Lottery Terminals (VLT) law for the Allegany County location that include:

- Increases the Allegany County VLT operation licensee's share of the proceeds to 50% for the first 10 years of operations and reduces all other revenue distributions, except for the State Lottery Agency, for the same time period.
- Prohibits the award of a video lottery operation license in Allegany County unless the applicant agrees to purchase the Rocky Gap Lodge and Resort.
- Repeals the requirement that VLTs be permanently located in a separate facility and reduces the maximum number of VLTs for the Allegany County facility from 1,500 to 1,000.

Additional provisions in the bill include:

- Allows all VLT facilities to extend operating hours from 2:00 a.m. until 4:00 a.m. on weekends.
- Clarifies that all VLTs, associated equipment and software are exempt from personal property tax.
- Allows an eligible fund manager receiving funds from the Small, Minority, and Women-Owned Businesses Account to use a portion of those funds for administrative and related fees.

These changes represent efforts to make Rocky Gap more attractive to gaming interests who want to develop a slots facility.

Additional changes apply to the statewide VLT program in an effort to attract more visitors and alter the use of funds directed to small, minority and women owned businesses.

SB 672 Maryland Film Production Employment Act of 2011

This bill creates a new incentive for Maryland's film industry. The bill converts the existing Film Production Rebate Program into a tax credit for qualified direct costs of a film production or TV series.

- The value of the subsidy to each qualifying film production entity is equal to 25% of the qualified direct costs of a film production activity and 27% of the qualified direct costs of a television series.
- DBED can award a maximum of \$7.5 million in credits in each fiscal year. If the amount of the tax credit exceeds the total tax liability in the tax year, the entity can claim a refund in the amount of the excess.
- The tax credit terminates July 1, 2014. *Effective July 1, 2011*

SB 746 Economic Development—Task Force on Industrial Job Creation in Baltimore County

Establishes a Task Force to be staffed by DBED to study the cause of job losses surrounding the ship-building and industrial sector in Baltimore County and make recommendations – including legislative and policy proposals – to encourage job growth in these sectors. *Effective July 1, 2011.* The task force will:

- Determine the causes of the loss of employment opportunities in industry, ship building and repair, and businesses that supply industry in Baltimore County.
- Identify current State policies on industrial job creation to determine if the policies are effective; and
- Make recommendations, including legislative and policy proposals, attract new employers, retain existing ones, encourage employers that have left to return and encourage employers in Baltimore County to maintain the number of employees they have.
- Submit a preliminary report by December 31, 2011, and a final report with findings and recommendations by June 1, 2012.

SB 841/HB 1281 Arts and Entertainment Districts—Artistic Work – Design

Expands the eligibility criteria for the tax benefits available for qualifying residing artists in A&E districts to individuals who create works that are an original design, classifying them as an artist under the program. Currently, only works that are original clothing designs qualify. *Effective July 1, 2011.*

SB 891 Economic Development—Qualified Distressed Counties

Increases the transition period from 12 to 24 months for counties that no longer meet the definition of a qualified distressed county under the Maryland Economic Development Assistance Fund and the One Maryland Economic Development Tax Credit program. The extension provides program continuity for the jurisdictions that have historically qualified, but no longer meet the unemployment threshold. *Effective July 1, 2011.*

HB 1151 Corporations and Associations—Name Requirements for Benefit Corporations and Limited Liability Companies – Election to Be a Benefit Limited Liability Company

Allows a Maryland limited liability company (LLC) to elect to be a benefit LLC. The benefit corporation designation, passed last year and now extended to LLCs, requires that a company create a material positive impact on society. In doing so, it offers company directors legal protection for considering public benefit in addition to profit when making decisions. *Effective July 1, 2011.*

■ Initiatives Requiring Further Study

Governor O'Malley's legislative agenda also included alternative energy and green jobs bills. While the bills did not pass, legislative leaders indicated a willingness to study wind energy during the 2011 Interim.

SB 861/HB 1054 Maryland Offshore Wind Energy Act

Requires the Public Service Commission to conduct a competitive procurement process for a 400-600 MW offshore wind project and requires Maryland's four investor-owned utilities to enter into long-term contracts for the output. Project costs would have been subsidized by Maryland's ratepayers.

SB 881/HB 1227 Economic Development Opportunities Program Account - Wind Turbine Manufacturing Facility

Alters definition of "extraordinary economic development opportunity" for purposes of the Economic Development Opportunities Program Account to incentivize the attraction of a new wind turbine manufacturing facility.

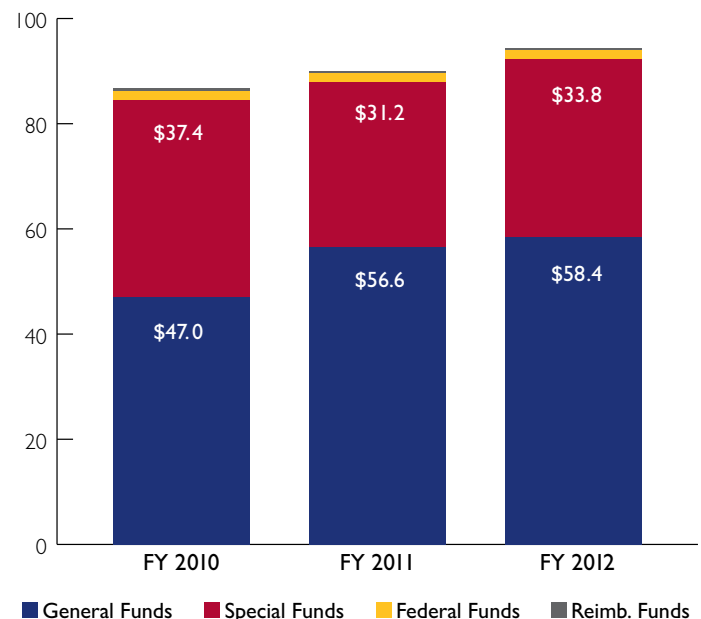
■ Budget Highlights

HB 70 Budget Bill—Fiscal Year 2012

- DBED's FY12 appropriation is \$95.1 million (preliminary legislative appropriation).
- The operating budget includes reductions of \$625,000; original DLS recommendations were for reductions of \$9.7 million.
- As adopted, the FY12 budget bill provides funding for:
 - Biotechnology Investment Incentive Tax Credit: \$8 million
 - MEDAAF: \$15 million TF authorized including 4.5M new GF
 - MSBDFA: \$5M TF, \$2.5 million new GF
 - MIDFA: \$2.4 million GF for nano-biotechnology industry support
 - Arts Council: \$14.4 million TF
 - Maintained Tourism Board funding at \$5.35M TF including \$5M GF
 - Film Production Rebate Grant Program: \$1 million GF and a supplemental of \$1M GF for total funding of \$2M

DBED Appropriations Fiscal Years 2010 to 2012

dollars in millions



Note: Fiscal Years 2010 and 2011 Special Fund appropriations have been adjusted downward by \$12MM to reflect the accounting change made to MSBDFA for comparison purposes.

■ Failed Legislation

In addition to the bills that passed, a number of bills concerning the business community, jobs, regulations and economic development were considered. A partial list of some of those introduced but that failed follows.

SB 209/HB 552 Corporations and Associations—Low-Profit Limited Liability Companies

Authorizes the formation of low-profit limited liability companies (L3Cs) as a permitted form of unincorporated business organization in the State. The L3C designation establishes an LLC as also having a charitable or educational purpose, allowing private charitable foundations to invest in these types of companies.

SB 305/HB 731 Corporate Income Tax—Combined Reporting

Requires all business entities of a corporate group under common ownership to file a Maryland income tax return combining all profits and losses of the entities, if at least one entity is subject to Maryland income taxes.

SB 387/HB 910 High Performance Buildings Act – Applicability to Recipients of State Aid

Requires that any State financial assistance over \$100k for capital projects would necessitate that the project meet the U.S. Green Building Council's LEED Silver certification.

SB 646/HB 795 Economic Development – Green Business Incentive Zones

Authorizes the creation of green business incentive zones and the establishment of a State income tax credit and a real property tax credit for business locating in green business incentive zones.

SB 798 Income Tax—Millionaires Tax—Extension of Termination Date

Extends to tax year 2014 the applicability of the 6.25% income tax rate on Maryland taxable income of an individual in excess of \$1,000,000.

SB 800 Corporate Income Tax Reform

Subjects specified nonoperational income of a corporation to state income tax. Would have also implemented a "throwback rule" in determining whether sales are considered in the State for purposes of the State's corporate income tax apportionment.

SB 829/HB 716 Health—Maryland Combating Childhood Obesity Grant Program

Creates a program to provide grants for physical activity programs for students enrolled in kindergarten through eighth grade and is funded by revenues generated through the repeal of the current sales and use tax exemption for snack foods.

SB 979 Taxation of Corporations—Alternative Minimum Assessment

Imposes an alternative minimum tax assessment on corporations based on a percentage of their gross receipts. Corporations would be taxed in the amount by which the assessment exceeds the corporate income tax liability for the taxable year.

HB 474 Construction and Development Projects—Expedited Approval of State Permits

Requires the Department of the Environment and the State Highway Administration to develop and implement processes to expedite the approval of State permits for construction and development projects that have received "fast track" status or that will create a significant number of jobs and have a positive impact on the State.

HB 524 Task Force to Review State Regulations

Establishes a Task Force to Review State Regulations in order to identify and suggest any regulatory changes that will increase efficiency and productivity.

HB 571 Maryland Biotech SBIR and STTR Bridge Program

Establishes a Maryland Biotech SBIR and STTR Bridge Program to provide bridge funding to eligible biotechnology businesses that have completed an SBIR or STTR Phase I project and have applied for an SBIR or STTR Phase II award.

HB 620 Tax Credit Evaluation Act

Establishes a legislative process for evaluating tax credits, and requires the automatic termination of any credit that is not renewed by an act of law. If renewed, a credit expires every five years unless specified otherwise in the law reestablishing the tax credit.

HB 1070 Income Tax—Millionaires Tax—Sunset Repeal

Makes permanent the income tax rate of 6.25% on Maryland taxable income of an individual in excess of \$1,000,000.

HB 1308 Tax Incentives and Benefits—Credits and Subtraction Modifications

Changes current tax credits to subtraction modifications, thereby significantly reducing their value as a business incentive. A subtraction modification is worth \$.0825 of \$1, where a tax credit is worth 100% of a \$1.

For more information please contact the Department's Office of Policy and Government Affairs at 410-767-6312, Rhonda Ray, Program Director

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